

**OAG Response to Written Questions for the Auditor  
Joint Select Committee on Flint Water Public Health Emergency  
March 15, 2016**

- I. When did your office begin its review of the Office of Drinking Water and Municipal Assistance within the MDEQ?

**On April 28, 2015 we sent a letter to the department Director announcing the start of the audit. We began field work in mid-June 2015 and expanded the scope of the audit in late October to address questions related to Flint. This audit will result in two performance audit reports, one on Community and Noncommunity Water Supplies and one on Swimming Pools, Campgrounds and Septage.**

2. How would you describe the level of cooperation you received from the MDEQ in preparing your work for this audit?

**MDEQ was very cooperative including all staff through executive management. MDEQ made audit requests for information and interviews a top priority. MDEQ was responsive to time frames established by our office for report processing, close out meetings, preliminary agency responses, and other request resulting from our quality assurance process.**

3. How has the staffing and funding level of the ODWA changed over the last 15 years?

**Observation #2 on page 27 of the report shows a chart comparing funding for fiscal year 2014 and 2015. Analysis of funding prior to fiscal year 2014 and staffing changes were not included in the scope of this audit.**

4. The OMDA did not take action in requiring corrosion control even though sample results exceeded EPA action levels because it wanted to wait another 6 months for more sampling ...You believe the ODWMA should have directed the Flint WTP to begin using corrosion controls once the initial action level was found. Why is that?

**Finding 1 addresses this question. The requirement to begin corrosion control treatment for a large system is at the practical quantitation level (PQL) of 5 ppb. Action level refers to lead levels at the 90<sup>th</sup> percentile that exceed 15 ppb and require public education steps in addition to corrosion control treatment. The first 6 month sample results indicated that lead levels were at 6 ppb.**

**We concluded that DEQ should have directed the Flint WTP to implement optimized corrosion control treatment for two reasons:**

- **The LCR requires that a large water system (serving more than 50,000 people) put an optimized corrosion control treatment plan in place when the computed PQL exceeds 5 ppb, and the Flint WTP water results exceeded 5 ppb. The plan would include deciding how to remedy the exceedance, for example in**

developing the plan DEQ and the system could decide to add a certain amount of phosphates and increase monitoring. Optimized corrosion control treatment would be the actual addition of chemicals.

- Even though DEQ interpreted the LCR to allow for two consecutive 6 month testing periods to determine whether treatment was necessary, because the first 6 months results exceed the PQL, it would not be possible to have two consecutive months under the 5 ppb PQL.

5. The MDEQ agreed that corrosion controls *"could have been pursued"* but weren't because the LCR language was ambiguous. Describe the basis for your office's use of the term "should" in this context versus the ODWMAs use of the term "could".

**We based our conclusion on our reading of the LCR requirement that a water system that has optimized corrosion control with treatment should continue to operate and maintain optimal corrosion control treatment when switching to a new water source. In addition we considered the results of the first 6 month sampling that exceeded the PQL as further support for treatment.**

**As noted in the report, the EPA indicated that the LCR could have differing interpretations, therefore it would be best to allow ODWMA to explain the basis for why they responded that treatment could have been pursued.**

6. Can you give us some idea as to the background of department staff so that we can begin to get a picture of the kind of expertise that DEQ staff possess with regard to implementation of the safe drinking water act?

**We did not include an objective related to staff qualifications within the scope of this audit.**

7. One of the concerns we have heard is that DEQ staff may not have been able to see the larger issues of protecting public health versus simply abiding by compliance with a technical application of the rules/law.

**ODWMA's mission is regulatory in nature and many of the activities focus on ensuring compliance with the State and federal safe drinking water acts. During our audit we did not identify specific documentation that would support the mindset of employees as it relates to protecting public health versus abiding by compliance with technical application of the rules or laws. Because there is not an audit trail, we cannot accurately speak to the DEQ staff mindset.**

8. Can you help us trace DEQ organizational restructuring of the ODWMA?

**We have an organization chart dated February 2, 2015. We are aware of staffing changes that were made in the fall of 2015. We did not include an organizational or**

**human resource objective in this audit, therefore we do not currently have the data necessary to trace DEQ's restructuring of the ODWMA.**

9. What historical problems with this division might have been uncovered in previous audits? Are there recurring problems? Recurring themes?

**We noted similar issues related to timeliness and documentation of surveys and visits as those reported in our prior audit issued in June of 2001.**

10. Are the individuals within the ODWMA that made this determination or provided guidance to those that did, primarily engineers? Are there any public health professionals?

**We did not include an audit objective related to verifying staff qualifications in the scope of this audit. The Department would be able to provide this information.**

11. Did you get any sense of the kind of relationships that the DEQ has established with local community water suppliers? Is there any kind of culture of cooperation or lack of cooperation that exists between the state and locals?

**We conducted site visits to selected district offices and local health departments. Nothing came to our attention to indicate that there were cooperation issues between ODWMA and the local entities. At the sites visited, we observed that there seemed to be a culture of cooperation.**

12. You criticized the ODWMA's for failing to conduct timely surveys and visits to ensure water quality. The audit seems to reflect a mistaken impression by the DEQ that the ODMA does not have to abide by state surveillance and survey requirements as long as they meet the federal standard-any idea if this attitude might have impacted other statutory mandates?

**Our audit exception is based on the criteria established in State rules and DEQ policy. DEQ's preliminary agency response indicates that it exceeded goals established by the the EPA. Because the OAG did not audit to the EPA criteria, we did not evaluate DEQ's perception of the priority related to federal and State compliance.**

13. Do you know if the survey and surveillance work was compromised by a lack of funding or simply not a matter of priority for the department?

**DEQ informed our staff that due to limited resources they were not always able to complete surveys and visits timely.**

14. You mention that your office is not capable of assessing many of the technical issues associated with the Lead Copper Rule but you observed that there are issues which should be explored. Could some of these issues be resolved with a clear statutory interpretation of the LCR?

**The LCR is a federal law. The items discussed in observation 1 on pages 17 through 20 in the report would likely be better addressed by State laws and/or policies that supplement the federal requirements. Whether addressed through State law or policy would be up to the discretion of the Legislature and Executive Branch.**

15. You criticized the ODWMA's for failing to ensure that sampling sizes and adequately provided a benchmark for drinking water safety. You indicated that this failure has been in place for some time in the department and has not been reviewed and revised to reflect more effective protocols. What are the reasons for this lapse?

**We are unclear as to the portion or portions of the audit report this question addresses. We would be happy to discuss further with the committee or a specific committee member to clarify the question and provide the appropriate response.**

16. Why did the ODWMA fail to enforce contractual remedies against Local Health Departments that failed to conduct sanitary surveys, surveillance visits, and other monitoring within the time frames required by the DEQ? Are these DEQ policies merely aspirational in nature or are they legal requirements?

**The contract covers the non-community water supply, septage, campgrounds, and public swimming pool programs. The contract does not have a specific remedy against the Local Health departments that fail to conduct sanitary surveys. The contract requires quarterly reporting on activities. Also, DEQ performs an annual evaluation of LHDs to ensure compliance with the contract. DEQ may be able to describe the types of actions taken if a local health department does not meet contract requirements.**

17. You found the ODWMA took a *"too-literal view of the LCR"* and that you *"became aware of many instances in which sole reliance on the LCR may not serve the best interests of Michigan citizens."* Can you elaborate on these instances?

**These instances are highlighted in Observation 1 on pages 17 through 20 of the audit report. The instances include:**

- **LCR compliance does not require monitoring for human exposure to lead**
- **LCR monitoring is generally limited to single –family residences in larger communities**
- **Resident-collected water samples could cause variations in results**
- **LCR 90<sup>th</sup> percentile calculation has been the sole means to determine lead action levels**
- **LCR lacks guidance on necessary actions if DEQ becomes aware that a prior 90<sup>th</sup> percentile calculation was based on inaccurate information**
- **LCR guidance allows the implementation of corrosion control treatment to**

**occur over several years.**

- **Partial replacement of lead service lines is ineffective**

18. In addition to developing administrative "guidance documents" to implant a culture of protection could a clear statutory interpretation of the LCR help facilitate this cultural change?

**See Answer to question 14.**

19. You indicate that annual fees alone did not cover the DEQ's cost of monitoring water samples--do you know if any of this fee revenue might have been diverted into other program areas? Have the annual fees covered costs in other years?

**We did not identify any instances where drinking water fees were diverted for use in other programs, although that was not the primary focus of this objective. We analyzed funding for fiscal years 2014 and 2015, we did not include any other fiscal years in the scope of this audit.**